give effect, for any purpose, in the courts of the Union, to the orders of the supreme political power of a State, made in defiance of the Constitution of the United States, is, practically, to announce that, so far as judicial action is concerned, a State may, by nullifying provisions in its fundamental law, destroy rights of contract, the obligation of which the Constitution declares shall not be impaired by any State law. To such a doctrine I can never give my assent.

I am, therefore, unable to concur in the opinion and judgment of the court.

ANTONI v. GREENHOW.

1. By issuing, pursuant to her "funding act" of March 30, 1871, her bonds with interest coupons thereto attached, the State of Virginia entered into a valid contract with every holder of the coupons, whereby she bound herself to receive them at and after their maturity for all taxes and demands due the State. So much of any enactment as forbids the receipt of the coupons for such taxes and demands impairs the obligation of the contract, and is void.
2. When the coupons were issued, the holder of them could, by the then existing law of the State, as interpreted by her court of last resort, enforce his right under the contract by suing out of that court a *mandamus* compelling the receipt of them by the proper tax-collector, who had refused to accept them when duly offered in payment of State taxes; and the plaintiff, if on the return to the writ judgment was rendered in his favor, could furthermore recover his costs with such damages as a jury might assess, and have forthwith a peremptory writ. By sect. 4 of an act passed Jan. 14, 1882, *post*, p. 771, when in such a case a *mandamus* is prayed for against the collector, the law imposes upon him as a duty to answer that he is ready to receive the offered coupon as soon as it shall be ascertained to be genuine and legally receivable for taxes. The taxpayer is then required to pay his taxes in lawful money, and file his coupon in the Court of Appeals, by which it is forwarded to the county court of the county, or to the hustings court of the city, where the taxes are payable, with directions to frame an issue as to whether it is genuine and legally receivable for taxes. Each party is entitled to exceptions and an appeal. If the issue is found for the petitioner, a *mandamus* is issued, and the money he paid is to be refunded to him out of the State treasury, in preference to all other claims. *Held*, that said sect. 4 furnishes an adequate and efficacious remedy substantially equivalent to that which existed at the date when the coupons were issued, whereby the rights of the holder of them, in case the collector refuses to receive them for taxes, can be maintained and enforced, and that the obligation of his contract with the State is not thereby impaired.

3. The court does not decide whether the act of the legislature, *post*, p. 779, approved April 7, 1882, after this suit was brought, repeals said sect. 4 of the act of Jan. 14, 1882, but holds that, if such is its effect, the remedy of the taxpayer is not rendered less efficient, inasmuch as the remaining sections furnish a proceeding which is an exact equivalent of that by *mandamus*, the real matter submitted for determination being whether his coupon ought to have been received in payment of his taxes; and if the issue is found for him, the provision is, without further legislative action, sufficient to authorize and require that the money which he deposited for that purpose shall be refunded to him from the State treasury.

ERROR to the Supreme Court of Appeals of the State of Virginia.

The case is stated in the opinion of the court.

Mr. William L. Royall for the plaintiff in error.

Mr. Frank S. Blair, Attorney-General of Virginia, for the defendant in error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

On the 30th of March, 1871, the General Assembly of Virginia passed an act to provide for the funding and payment of the public debt, by which two-thirds of the amount due on old bonds might be funded in new bonds, with interest coupons attached "receivable at and after maturity for all taxes, debts, dues, and demands due the State." Under this act many bonds were put out with coupons which expressed on their face that they were receivable for taxes. On the 7th of March, 1872, however, the General Assembly passed another act prohibiting the officers charged by law with the collection of taxes from receiving in payment anything else than gold and silver coin, United States treasury notes, and notes of the national banks, and repealing all other acts inconsistent therewith.

The Supreme Court of Appeals of Virginia decided, at its November Term, 1872, in *Antoni* v. *Wright*, 22 Gratt. 833, that in issuing these bonds the State entered into a valid contract with all persons taking the coupons to receive them in payment of taxes and State dues, and that the act of 1872, so far as it conflicted with this contract, was void. The authority of this case was recognized in *Wise* v. *Rogers*, 24 id. 169; and in *Clarke* v. *Tyler*, 30 id. 134, 137, decided in 1878, it was said: "This

decision of *Antoni* v. *Wright* . . . must be held to be the settled law of this State." The same questions were decided in the same way here at the October Term, 1880, in *Greenhow* v. *Hartman*, 102 U. S. 672, and are no longer open in this court. Any act of the State which forbids the receipt of these coupons for taxes is a violation of the contract and void as against coupon-holders.

At the time the act of 1871 was passed, and when the bonds and coupons were issued, the Supreme Court of Appeals of the State had jurisdiction to grant a *mandamus* in any cases where the writ would lie, according to the principles of the common law, if necessary to prevent a failure of justice; and in *Antoni* v. *Wright*, *ubi supra*, it was decided that a *mandamus* was the proper remedy to compel a collector to accept the coupons in question when offered in payment of taxes. *Vise* v. *Rogers* presented the same question, and we understand it to have been the settled practice of that court to entertain suits for similar relief.

The form and mode of proceeding were regulated by statute. Sect. 1, c. 151, of the Code of Virginia, 1873, p. 1023, provided that the return to a writ of *mandamus* should state plainly and concisely the matter of law or fact relied on in opposition to the complaint; that the complainant might thereupon demur to the return, or plead thereto, or both, and that the defendant might reply, take issue on, or demur to the pleas of the complainant. The case was to be tried at the place where writs of error to the court were to be tried, and after a verdict was found, or judgment rendered on demurrer or otherwise for the person suing out the writ, he could recover his costs, with such damages as the jury might assess, and have forthwith a peremptory writ. Code, p. 1051.

On the 14th of January, 1882, the General Assembly passed the following act: —

"CHAP. 7. — *An Act to prevent frauds upon the Commonwealth and the holders of her securities in the collection and disbursement of revenues.*

"Whereas, bonds purporting to be the bonds of this Commonwealth, issued by authority of the act of March thirtieth, eighteen hundred and seventy-one, entitled an act to provide for the funding and payment of the public debt, and under the act of March twenty-eight, eighteen hundred and seventy-nine, entitled an act

to provide a plan of settlement of the public debt, are in existence without authority of law;

"And whereas, other such bonds are in existence which are spurious, stolen, or forged, which bonds bear coupons in the similitude of genuine coupons, receivable for all taxes, debts, and demands due the Commonwealth;

"And whereas, the coupons from such spurious, stolen, or forged bonds are received in payment of taxes, debts, and demands;

"And whereas, genuine coupons from genuine bonds, after having been received in payment of taxes, debts, and demands, are fraudulently reissued, and received more than once in such payments;

"And whereas, such frauds on the rights of the holders of the aforesaid bonds impair the contract made by the Commonwealth with them, that the coupons thereon should be received in payment of all taxes, debts, and demands due the said Commonwealth, and at the same time defraud her out of her revenues;

"Therefore, for the purpose of protecting the rights of said bondholders and of enforcing the said contract between them and the Commonwealth, preventing frauds in the revenue of the same,

"1. *Be it enacted by the General Assembly of Virginia*, That whenever any taxpayer or his agent shall tender to any person whose duty it is to collect or receive taxes, debts, or demands due the Commonwealth, any papers or instruments in print, writing, or engraving, purporting to be coupons detached from bonds of the Commonwealth issued under the act of eighteen hundred and seventy-one, entitled an act to fund the public debt, in payment of any such taxes, debts, and demands, the person to whom such papers are tendered shall receive the same, giving the party tendering a receipt stating that he has received the same for the purpose of identification and verification.

"2. He shall at the same time require such taxpayer to pay his taxes in coin, legal-tender notes, or national-bank bills, and upon payment give him a receipt for the same. In case of refusal to pay, the taxes due shall be collected as all other delinquent taxes are collected.

"3. He shall mark each paper as coupons so received, with the initials of the taxpayer from whom received, and the date of receipt, and shall deliver the same, securely sealed up, to the judge of the county court of the county or hustings court of the city in which such taxes, debts, or demands are payable. The taxpayer shall thereupon be at liberty to file his petition in said county court against the Commonwealth. A summons to answer which petition shall be served on the Commonwealth's attorney, who shall appear and defend the

same. The petition shall allege that he has tendered certain coupons in payment of his taxes, debts, and demands, and pray that a jury be impanelled to try whether they are genuine, legal coupons, which are legally receivable for taxes, debts, and demands. Upon this petition an issue shall be made in behalf of the Commonwealth which shall be tried by a jury, and either party shall have a right to exceptions on the trial and of appeal to the Circuit Court and Court of Appeals. If it be finally decided in favor of the petitioner that the coupons tendered by him are genuine, legal coupons, which are legally receivable for taxes, and so forth, then the judgment of the court shall be certified to the treasurer, who, upon the receipt thereof, shall receive said coupons for taxes and shall refund the money before then paid for his taxes by the taxpayer out of the first money in the treasury, in preference to all other claims.

"4. Whenever any taxpayer shall apply to any court in this Commonwealth for a *mandamus* to compel any person authorized to receive or collect taxes, debts, or demands due the Commonwealth to receive coupons for taxes, it shall be the duty of such person to make return to said *mandamus*, that he is ready to receive said coupons in payment of such taxes, debts, and demands as soon as they have been legally ascertained to be genuine, and the coupons which by law are actually receivable. Upon such return, the court before whom the application is made shall require the petitioner to pay his taxes to the tax-collector of his county or city, or to the treasurer of the Commonwealth, and upon filing the receipt for such taxes in such court the said court shall direct the petitioner to file his coupons in such court, which shall then forward the same to the county court of the county or hustings court of the city where such taxes are payable, and direct such court to frame an issue between the petitioner as plaintiff and the Commonwealth as defendant as to whether the coupons so tendered are genuine coupons, legally receivable for taxes. On the trial of the cause the attorney for the Commonwealth in the lower courts, and the attorney-general in the Supreme Court of Appeals, shall appear for the Commonwealth and require proof of the genuineness and legality of the coupons in issue. Either party shall be entitled to exceptions, and an appeal to the Circuit Court and Supreme Court of Appeals on the trial of this issue. If the decision be finally in favor of the petitioner, the *mandamus* shall issue requiring the coupons to be received for said taxes, and so forth; and they shall be so received; and on the certificate of such judgment the treasurer of the Commonwealth shall forthwith refund to the taxpayer the amount

of currency or money before then paid by him out of the first money in the treasury, in preference to all other claims.

"5. This act shall be in force from its passage."

On the 20th of March, 1882, Andrew Antoni, who owed the State taxes to the amount of three dollars and fifteen cents, tendered in payment, to the treasurer of the city of Richmond, the tax-collector, fifteen cents in lawful money, and a coupon, of the issue of 1871, for three dollars. This tender was refused, and Antoni, on the 28th of March, petitioned the Supreme Court of Appeals for a *mandamus* to require its acceptance. The treasurer, on the 30th of March, for a return to an order to show cause, said that he was ready to receive the coupon as soon as it had been legally ascertained to be genuine, and such as by law was actually receivable. To this return a demurrer was filed. Upon the hearing of the demurrer, the court being equally divided in opinion on the questions involved, "in pursuance of an act of assembly in such case made and provided," denied the writ. From a judgment to that effect this writ of error was brought.

The question we are now to consider is not whether, if the coupon tendered is in fact genuine and such as ought, under the contract, to be received, and the tender is kept good, the treasurer can proceed to collect the tax by distraint or such other process as the law allows, without making himself personally responsible for any trespass he may commit, but whether the act of 1882 violates any implied obligation of the State in respect to the remedies that may be employed for the enforcement of its contract, if the collector refuses to take the coupon.

It cannot be denied that, as a general rule, laws applicable to the case which are in force at the time and place of making a contract enter into and form part of the contract itself, and "that this embraces alike those laws which affect its validity, construction, discharge, and enforcement." *Walker* v. *Whitehead*, 16 Wall. 314, 317. But it is equally well settled that changes in the forms of action and modes of proceeding do not amount to an impairment of the obligations of a contract, if an adequate and efficacious remedy is left. This limitation upon the prohibitory clause of the Constitution in respect to the

legislative power of the States over the obligation of contracts was suggested by Chief Justice Marshall in *Sturges* v. *Crowninshield*, 4 Wheat. 122, and has been uniformly acted on since. *Mason* v. *Haile*, 12 Wheat. 370; *Bronson* v. *Kinzie*, 1 How. 311; *Von Hoffman* v. *City of Quincy*, 4 Wall. 535; *Drehman* v. *Stifle*, 8 id. 595; *Gunn* v. *Barry*, 15 id. 611; *Walker* v. *Whitehead*, 16 id. 314; *Terry* v. *Anderson*, 95 U. S. 628; *Tennessee* v. *Sneed*, 96 id. 69; *Louisiana* v. *Pilsbury*, 105 id. 278. As was very properly said by Mr. Justice Swayne in *Von Hoffman* v. *City of Quincy*, *ubi supra*, "It is competent for the States to change the form of the remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy, which are to be deemed legitimate, and those which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances. Whenever the result last mentioned is produced the act is within the prohibition of the Constitution, and to that extent void." p. 553. In all such cases the question becomes, therefore, one of reasonableness, and of that the legislature is primarily the judge. *Jackson* v. *Lamphire*, 3 Pet. 280; *Terry* v. *Anderson*, *ubi supra*. We ought never to overrule the decision of the legislative department of the government, unless a palpable error has been committed. If a state of facts could exist that would justify the change in a remedy which has been made, we must presume it did exist, and that the law was passed on that account. *Munn* v. *Illinois*, 94 U. S. 113. We have nothing to do with the motives of the legislature, if what they do is within the scope of their powers under the Constitution.

The right of the coupon-holder is to have his coupon received for taxes when offered. The question here is not as to that right, but as to the remedy the holder has for its enforcement when denied. At the time the coupon was issued, there was a remedy by *mandamus* from the Supreme Court of Appeals to compel the tax-collector to take the coupon and cancel the tax. This implied a suit, with process, pleadings, issues, trial, and judgment. No restrictions were placed on the defences the collector could make. He might raise such issues as he chose.

Without the aid of some restraining power, the mere pendency of the suit would not prevent the collector from proceeding according to law with the collection of the tax. He might, if he went on, subject himself to liability for damages, if the tender was one he ought to have accepted; but there was nothing to prevent his going on if he chose to take this risk.

Under this law the trial must be had in the Supreme Court of Appeals at the time and place where it was to be held for other purposes. There was nothing in the law to give the case preference over others for trial. So far as we are informed, it stood as other cases before the court, and was subject to such orders as should seem to be reasonable. The tax-collector could not be compelled to accept the coupon and discharge the tax until final judgment. If the final judgment was in favor of the holder, he recovered his costs and such damages as the jury might give him.

Under sect. 4 of the act of 1882, when a *mandamus* is asked for, the collector is required by law to return to the alternative writ or rule "that he is ready to receive said coupons in payment of such taxes, . . . as soon as they have been legally ascertained to be genuine, and the coupons which by law are actually receivable." Upon such return the court must require the petitioner to pay his taxes, which being done the coupons are taken and forwarded to the county court of the county or the hustings court of the city where the taxes are payable, with directions to that court to frame an issue between the petitioner as plaintiff and the Commonwealth as defendant, as to whether the coupons so tendered are genuine coupons, legally receivable for taxes. Upon this issue proof of the genuineness and legality of the coupons must be made. Either party may take exceptions and carry the case, on appeal, to the Circuit Court and the Supreme Court of Appeals. If the decision is in favor of the petitioner, a *mandamus* is to issue and the money he paid returned to him out of the first money in the treasury, in preference to all other claims.

The following changes are thus made in the old remedy: 1. The taxes actually due must be paid in money before the court can proceed, after the collector has signified in the proper way his willingness to receive the coupons, if they are genuine

and in law receivable; 2. The coupons must be filed in the Court of Appeals; and, 3. They must be sent to the local court to have the fact of their genuineness and receivability determined, subject to an appeal to the Circuit Court and the Supreme Court of Appeals. As the suit is for a *mandamus*, all the provisions of the general law regulating the practice not inconsistent with the new law remain; and if the petitioner succeeds in getting his peremptory writ he will recover his costs. No issues are required that it would not have been in the power of the collector to raise before the change was made, and there is no additional burden of proof imposed to meet the issues; so that the simple question is, whether the requirement of the advance of the taxes, and the change of the place and manner of trial, impair the obligation of the contract on the part of the State to furnish an adequate and efficacious remedy to compel a tax-collector to receive the coupons in payment of taxes, in case he will not do it without compulsion.

1. As to the payment of the taxes in advance.

In this connection it must be borne in mind that the legislation, the validity of which is involved, relates alone to the collection of taxes levied under the authority of the State for the purposes of revenue. Promptness in the payment of taxes by the citizen is as important as promptness by the State in the discharge of its own obligations. In fact, ordinarily the last cannot be done without the first. Hence, under the revenue system of the United States, the collection of the revenue in the manner prescribed by law cannot be restrained by judicial proceedings. The only remedy for an illegal exaction is payment under protest and a suit to recover back the money paid. The reason is, that as it is necessary the government should be able to calculate with certainty on its revenues, it is better that the individual should be required to pay what is demanded under the forms of law, and sue to recover back what he pays, than that the government should be embarrassed in its operations by a stay of collection.

It is to be noticed also that the law which authorized the issue of the bonds and coupons did not in express terms provide that the coupon-holder should have the remedy of *mandamus* to compel the tax-collector to take his coupons. His claim to

relief in that way rests alone on the fact, that when his coupon was issued *mandamus* was an existing form of action in the State, which the courts have decided was applicable to such a case. What the legislature has done is only to say, that before this remedy can be resorted to the amount due for taxes shall be deposited in the treasury. That being done, the suit may go on. If in the suit it shall be determined that the coupons tendered are genuine and in law receivable, the collector will be required to accept them, and the money will be restored. If, however, the judgment is against the coupon-holder, the taxes will be paid, and the State will have suffered no inconvenience for want of its just revenues. Looking at the case, therefore, as one affecting the collection of the public revenue, we cannot see that the requirement of the advance of the taxes as a condition to the employment of the remedy is such an impairment of the contract as makes the requirement invalid.

2. As to the change in the place and mode of trial.

We cannot think this of itself invalidates the law. So far as the change of place is concerned, it simply takes from the Supreme Court of Appeals jurisdiction for the trial of the questions of fact, and confers precisely the same jurisdiction upon another court, with ample provision for appeal, so that in the end the authority of the Court of Appeals may be invoked on all matters of law. The courts on which the new jurisdiction is conferred are required by law to hold frequent terms, and the trial is to be had in the county where the taxes are to be paid. It is difficult to see how this impairs, in any manner, either the adequacy or the efficiency of the original remedy.

Then, as to the manner of the trial. The deposit of the coupons with the Court of Appeals, if the suit is to go on, cannot be considered unreasonable. If the trial had been conducted under the old law, the coupons would have to be at some time surrendered, and the precise stage of the case in which this is to be done is by no means important, so far as the present question is concerned. Neither does the positive requirement of an issue as to the genuineness and receivability of the coupons and a trial by jury affect the validity of the law. Under the old law, this same issue might have been raised, and the same trial by jury required. It certainly is not an impair-

ment of an old remedy to make that imperative which before was discretionary.

Without pursuing the subject further, we say that, in our opinion, the fourth section of the act of 1882 does not impair the obligation of any contract which the State has made with the holders of its interest coupons.

After this suit was begun, but before it was tried, the General Assembly of Virginia, by an act approved April 7, 1882, amended the section of the code conferring jurisdiction on the Supreme Court of Appeals in suits for *mandamus*, so that it now reads as follows: —

"CHAP. 19. — *An Act to amend and re-enact section four, chapter one hundred and fifty-six, of the code of eighteen hundred and seventy-three, in relation to mandamus, prohibition, &c.*

1. "*Be it enacted by the General Assembly of Virginia*, That chapter one hundred and fifty-six, section four, of the Code of Virginia of eighteen hundred and seventy-three, be amended and re-enacted, so as to read as follows: —

"SECT. 4. The said Supreme Court, besides having jurisdiction of all such matters as are now pending therein, shall have jurisdiction to issue writs of *mandamus* and prohibition to the circuit and corporation courts, and to the hustings court and the chancery court of the city of Richmond, and in all other cases in which it may be necessary to prevent a failure of justice, in which a *mandamus* may issue according to the principles of the common law, provided that no writ of *mandamus*, prohibition, or any other summary process whatever, shall issue in any case of the collection or attempt to collect revenue, or compel the collecting officers to receive anything in payment of taxes other than as provided in chapter forty-one, acts of assembly, approved January twenty-six, eighteen hundred and eighty-two, or in any case arising out of the collection of revenue in which the applicant for the writ of process has any other remedy adequate for the protection and enforcement of his individual right, claim, and demand, if just.

"The practice and proceedings upon such writs shall be governed and regulated, in all cases, by the principles and practice now prevailing in respect to writs of *mandamus* and prohibition respectively.

"2. This act shall be in force from its passage."

This, it is claimed, repealed sect. 4 of the act of January, 1882, and took away entirely the remedy by *mandamus*. Without deciding that question we proceed to consider the remedy provided in sects. 1, 2, and 3 of the act of 1882, which, it is conceded, will remain in force even if sect. 4 is repealed. These sections provide, in substance, that if coupons are tendered in payment of taxes, the collector shall take and receipt for them for the purposes of identification and verification. He shall then require payment of the taxes in money, and after marking the coupons with the initials of the name of the owner, deliver them to the judge of the county court of the county or hustings court of the city where the taxes are payable. The taxpayer may then file his petition in the county or hustings court against the Commonwealth to have a jury impanelled to try whether the coupons "are genuine, legal coupons, which are legally receivable for taxes, debts, and demands." The Commonwealth may be brought into court by service of a summons on the Commonwealth's attorney. Upon this petition an issue is framed and a trial by jury is to be had, with ample privileges to all parties of exception and appeal. If the suit is finally decided in favor of the taxpayer, he is to have the amount paid by him for the taxes refunded out of the first money in the treasury, in preference to all other claims.

It is somewhat difficult to see any substantial difference between the remedy given by these sections and that by sect. 4. There the form of the suit is *mandamus* begun while the coupons are in the hands of the taxpayer. After the suit has been begun the court requires a delivery of the coupons into its own possession, and the payment of the amount of the taxes into the treasury. This being done, the court sends the coupons to the appropriate tribunal for adjudication, and the proceedings thereafter are in all material respects like those provided for in the other sections. The judgment is also the same, except as to the merest matters of form. In both proceedings the object is to require the collector to accept the coupons as payment of the tax, and deliver back the money that has been deposited for the same purpose in case the coupons are not in law receivable. The petition for *mandamus*, filed in the Court of Appeals, under sect. 4, is the exact equivalent of the petition

to be filed in the other courts, under sects. 1, 2, and 3, to have the genuineness and the receivability of the coupons determined, and in both the real matter submitted for determination is, whether the taxpayer is entitled to have back the money he has deposited to pay his taxes in case his coupons ought to have been received.

Mandamus, in this class of cases, is in the nature of a suit to enforce the specific performance of a contract. But in the present case the performance sought is the payment of money, and the remedy substituted is equivalent to an action for its recovery, with ample provision for the satisfaction of any judgment that may be obtained; for it is made the ministerial duty of the treasurer to pay the amount of the recovery out of the first money in the treasury, and in preference to all other claims, as soon as the judgment is properly certified. The language of the act is, "shall refund the money before then paid for his taxes by the taxpayer out of the first money in the treasury in preference to all other claims." Clearly this is an appropriation by law of money in the treasury, within the meaning of art. 10, sect. 10, of the Constitution of Virginia, and the treasurer would be authorized to make the payment without further legislative action. It will be time enough to consider the effect of a repeal of this branch of the remedy when that shall be attempted.

The primary obligation of the State is for the payment of the coupons. All else is simply as a means to that end. It matters not whether the coupons have been refused for the taxes, if full payment of the amount they call for is actually made in money. A remedy, therefore, which is ample for the enforcement of the payment of the money is ample for all the purposes of the contract. That, we think, is given by the act of 1882 in both forms of proceeding.

Some objection is made to the first, second, and third sections because there is no provision for the recovery of costs. Without determining whether in point of fact costs can be recovered, it is sufficient to say that costs, *eo nomine*, were not recoverable at common law, and are usually regulated by statute. Certainly it would not be claimed that the change of an ordinary statute, which provided a remedy for the enforcement

of contracts, so as to prevent the recovery of costs when they had been given before, would impair the obligation of contracts between individuals that were affected by what was done, and we see no reason why one rule, in this particular, should be applied to individuals and another to the State.

In conclusion, we repeat that the question presented by this record is not whether the tax-collector is bound in law to receive the coupon, notwithstanding the legislation which, on its face, prohibits him from doing so, nor whether, if he refuses to take the coupon and proceeds with the collection of the tax by force, he can be made personally responsible in damages for what he does, but whether the obligation of the contract has been impaired by the changes which have been made in the remedies for its enforcement in case he refuses to accept the coupons. We decide only the question which is actually before us. It is no doubt true that the commercial value of the bonds and coupons has been impaired by the hostile legislation of the State; but this impairment, in our opinion, comes not from the change of the remedies, but from the refusal to accept the coupons without suit. What we are called upon to consider in this case is not the refusal to take the coupons, but the remedy after refusal.

We might have satisfied ourselves by a reference to the case of *Tennessee* v. *Sneed*, *ubi supra*, where the same general question was before us; but as we were asked to reconsider that case, we have done so with the same result, and, as we think, without in any manner departing from the long line of cases in which the principle involved has been recognized and applied.

Inasmuch as we are satisfied that a remedy is given by the act of 1882, substantially equivalent to that in force when the coupons were issued, we have not deemed it necessary to consider what would be the effect of a statute taking away all remedies.

Judgment affirmed.

MR. JUSTICE MATTHEWS. I concur in the judgment of the court, but prefer to rest the decision upon a ground different from that on which it is placed in its opinion.

I agree that the State of Virginia, by the act of 1871, entered into a valid contract with the holders of its bonds to receive their coupons in payment of taxes; and that any subsequent statute which denies this right is a breach of its contract and a violation of the Constitution of the United States.

But for a breach of its contract by a State no remedy is provided by the Constitution of the United States against the State itself; and a suit to compel the officers of a State to do the acts which constitute a performance of its contract by the State is a suit against the State itself.

If the State furnishes a remedy by process against itself or its officers, that process may be pursued because it has consented to submit itself to that extent to the jurisdiction of the courts; but if it chooses to withdraw its consent by a repeal of all remedies, it is restored to the immunity from suit, which belongs to it as a political community, responsible in that particular to no superior.

I adopt as decisive of the present case the language of the Chief Justice, in expressing the opinion of the court in *Louisiana* v. *Jumel*, *ante*, pp. 711, 728: "When a State submits itself, without reservation, to the jurisdiction of a court in a particular case, that jurisdiction may be used to give full effect to what the State has, by its act of submission, allowed to be done; and if the law permits coercion of the public officers to enforce any judgment that may be rendered, then such coercion may be employed for that purpose. But this is very far from authorizing the courts, when a State cannot be sued, to set up its jurisdiction over the officers in charge of the public moneys, so as to control them as against the political power in their administration of the finances of the State."

I do not, therefore, consider it necessary to enter upon the inquiry, whether the remedy provided by the State of Virginia, by the act of 1882, is effective and substantial compared with that which existed in 1871, when the bonds were issued. It is sufficient to say that it is the one which the State has chosen to give, and the only one, therefore, which the courts of the United States are authorized to administer.

MR. JUSTICE BRADLEY, MR. JUSTICE WOODS, and MR. JUSTICE GRAY concurred in the judgment upon both grounds: that stated in the opinion of the court as delivered by the Chief Justice, and that stated in the opinion of MR. JUSTICE MATTHEWS.

MR. JUSTICE FIELD and MR. JUSTICE HARLAN dissented.

MR. JUSTICE FIELD. I am not able to agree with the majority of the court in the judgment in this case, nor in the reasoning on which it is founded. The legislation of Virginia, which is sustained, appears to me to be in flagrant violation of the contract with her creditors under the act of March 30, 1871, commonly known as the Funding Act; and the doctrines advanced by the court, though not so intended, do, in fact, license any disregard of her obligations which the ill-advised policy of her legislators may suggest.

The plaintiff in error, the petitioner in the court below, is a citizen of Virginia and a resident of the city of Richmond. He owns property there, and on the 20th of March, 1882, was indebted to the State for taxes to the amount of three dollars and fifteen cents. At that time he was also the lawful holder of an overdue interest-coupon for three dollars, which had been cut from a bond of the State, issued under the provisions of the Funding Act. This coupon is in the following words: —

"The Commonwealth of Virginia will pay the bearer three dollars, interest due first January, 1882, on bond 6,498.

"GEORGE RYE,
"*Treasurer of the Commonwealth of Virginia.*

"Coupon No. 21."

And on its face it thus declares: —

"Receivable at and after maturity for all taxes, debts, and demands due the State."

The receivability of such coupons for State taxes, debts, and demands was, as will hereafter be shown, the principal consideration for the surrender of former bonds of the State and the acceptance of a less number in their place.

The petitioner, in payment of his taxes, tendered the coupon he held and fifteen cents in money to the treasurer of Richmond, who was charged by law with the duty of collecting taxes due to the State in that city; but he refused to receive them. Application was then made to the Supreme Court of Appeals to compel their receipt. The treasurer set up in his answer that he was ready to receive the coupon in payment of the taxes as soon as it was ascertained to be genuine and legally receivable. This answer was founded upon the provisions of the act of Jan. 14, 1882, entitled "An Act to prevent frauds upon the Commonwealth and the holders of her securities in the collection and disbursement of revenues." Upon the validity of its provisions the judges of the Court of Appeals were equally divided, and the application failed. The preamble of the act recites that bonds purporting to be those of the Commonwealth, issued under the act of March 30, 1871, are in existence without authority of law; that other bonds are in existence, which are spurious, stolen, or forged, bearing coupons in the similitude of those which are genuine and receivable for taxes, debts, and demands of the State; that coupons from such spurious, stolen, and forged bonds are received in payment of such taxes, debts, and demands; that coupons from genuine bonds, after having been thus received, are frequently reissued and received more than once in such payment; and that such frauds on the rights of the holders of the bonds impair the contract made by the Commonwealth with them, and, therefore, for the alleged purpose of protecting the rights of the bondholders, and of enforcing the contract between them and the State, the act declares that whenever any taxpayer or his agent shall tender to a collector any papers or instruments in print purporting to be coupons detached from bonds of the Commonwealth, issued under the act of 1871, to fund the public debt, the collector shall receive the same, and give the party tendering a receipt, stating that he has received them for the purpose of identification and verification; that he shall, at the same time, require such taxpayer to pay his taxes in coin, legal-tender notes, or national-bank bills, and if payment be refused, the taxes shall be collected as other delinquent taxes; that the collector shall mark each coupon thus received with

the initials of the taxpayer, and deliver them sealed up to the judge of the county court of the county or hustings court of the city in which the taxes are payable. It then provides that the taxpayer shall be at liberty to file his petition in said county court against the Commonwealth; that a summons to answer the same shall be served on the Commonwealth's attorney, who is to appear and defend the same; that in his petition the taxpayer must allege that he has tendered the coupons in payment of his taxes, and pray that a jury be impanelled "to try whether they are genuine legal coupons, which are legally receivable for taxes, debts, and demands." Upon this petition an issue is to be made on behalf of the Commonwealth, which is to be tried by a jury, and either party is to have a right to exceptions on the trial and to an appeal to the Circuit Court and ultimately to the Court of Appeals. If it be finally decided in favor of the petitioner that the coupons are "genuine, legal coupons, receivable for taxes, and so forth," then the judgment of the court is to be certified to the treasurer of the Commonwealth, who, upon receipt thereof, shall receive the coupons for taxes and refund to the taxpayer the amount before paid by him out of the first money in the treasury, in preference to other claims.

The act also provides that whenever any taxpayer applies to a court for a *mandamus* to compel a collector of taxes to receive coupons for them, it shall be the duty of the collector to return that he is ready to receive, in payment of the taxes, the coupons as soon as they have been legally ascertained to be genuine, and by law actually receivable; and that, upon such return being made, the court shall require the petitioner to pay his taxes to the collector of the city or county, or to the treasurer of the Commonwealth; and upon filing the receipt for the same, that the court shall direct the petitioner to file his coupons in court, which shall then forward the same to the county court of the county or hustings court of the city where the taxes are payable, and direct that court to frame an issue between the petitioner and the Commonwealth as to whether the coupons thus tendered are genuine and legally receivable for taxes. On the trial either party is to be entitled to exceptions, and to an appeal to the Circuit Court and to the Supreme

Court of Appeals. If the decision be finally in favor of the petitioner, he is to be entitled to a *mandamus* that the coupon be received for taxes; but inasmuch as those taxes have already been paid, they are to be refunded by the treasurer of the Commonwealth out of the first money in the treasury, in preference to all other claims. A subsequent act, passed on the 7th of April, 1882, amending a section of the Code of Virginia of 1873, prohibits the Supreme Court of Appeals from issuing the writ of *mandamus* or any other summary process to compel the collecting officers of the State to receive anything in payment of taxes other than gold or silver, treasury notes of the United States, or bills of the national banks.

The question for decision here is as to the constitutionality of the act of Jan. 14, 1882, which destroys the receivability of the coupon for taxes, allows a suit for the recovery of its amount only after they have been paid, and authorizes a recovery only when the jury have found that it is genuine and legally receivable for them, and of the act of April 7, 1882, which withdraws from the Supreme Court of Appeals the power to compel the receivability of the coupon for taxes. In other words, Do these acts impair the obligation of the contract upon which the coupons were originally issued?

A brief reference to the history of the Funding Act of 1871 will serve to place this subject in a clear light. Prior to the late war Virginia constructed various public works, and to enable her to do so she borrowed large sums of money, for which she issued her bonds, exceeding in amount thirty millions of dollars. The interest on them was regularly paid up to the breaking out of the war. Afterwards its payments ceased, and until 1871, with the exception of some small sums remitted to London for foreign bondholders or paid in Virginia in Confederate money, and a small amount in 1866 and 1867, no part of the interest or principal was ever paid. In 1871, the principal of her debt, with its unpaid and overdue interest, amounted to over forty-five millions of dollars.

During the war the people of a portion of her territory separated from her, and formed a new State, by the name of West Virginia, which was admitted by Congress into the Union. Nearly one-third of the territory of Virginia and one-third of

her people were thus withdrawn from her original limits and jurisdiction. Her then indebtedness was justly chargeable against her and the new State in some ratable proportion. The money raised by her bonds had been expended in improvements throughout her entire territory. All portions of it had participated in the benefits conferred by the expenditure of the moneys. It was but just, therefore, that the new State should assume and pay an equitable proportion of the debt. It is a well-settled doctrine of public law that, upon a division of a State into two or more States, her debts shall be ratably apportioned among them. See authorities upon this subject in *Hartman* v. *Greenhow*, 102 U. S. 672, 677.

In conformity with this doctrine, West Virginia, in her first Constitution, adopted in 1863, recognized her liability in this respect, and declared that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January in the year 1861 shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." Constitution of 1863, art. 8, sect. 8. She, however, did nothing, up to 1871, to give effect to this unequivocal and solemn recognition of her liability, or to her positive injunction that the legislature should, as soon as practicable, ascertain the same and provide for its liquidation; and she has done nothing since.

The Commonwealth of Virginia, nevertheless, undertook in that year to effect a settlement with her creditors, taking as a basis that inasmuch as one-third of her former territory and population was embraced in the new State, the latter should assume one-third of the debt, and the Commonwealth should settle for the remainder. Accordingly, her legislature on the 30th of March, 1871, passed the Funding Act. It is entitled "An Act to provide for the funding and payment of the public debt." Its preamble recites that, in the ordinance authorizing the creation of the State of West Virginia, it was provided that she should take upon herself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, and that this provision has not been

fulfilled, although repeated and earnest efforts in that behalf have been made by Virginia, and that the people of the Commonwealth are anxious for the prompt liquidation of her proportion of the debt, estimated at two-thirds of the same; and then declares that to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which may be interposed to any other manner of settlement, and for the purpose of promptly restoring the credit of Virginia, by providing for the prompt and certain payment of the interest upon the just proportion of her debt as the same should become due, the legislature enacts that the owners of the bonds, stocks, or interest certificates of the State, with some exceptions, may fund two-thirds of the amount of the same, together with two-thirds of the interest due, or to become due, thereon, up to July 1, 1871, in six per cent coupon or registered bonds of the State having thirty-four years to run, but redeemable at the pleasure of the State after ten years, the bonds to be made payable to order or bearer, and the coupons to bearer. The act declares that the coupons shall be payable semi-annually, and "be receivable at and after maturity for all taxes, dues, and demands due the State," which shall be so expressed on their face, and that the bonds shall bear on their face a declaration to the effect that their redemption is secured by a sinking fund, provided for by the law under which they were issued. For the remaining one-third of the amount of the bonds thus funded the act provides that certificates shall be issued to the creditors, setting forth the amount, with the interest thereon, and that their payment shall be provided for in accordance with such settlement as may subsequently be made between the two States, and that Virginia will hold the bonds surrendered, so far as they are not funded, in trust for the holder or his assignees.

This act induced a large number of creditors to surrender their bonds, and take new bonds, with interest coupons annexed, for two-thirds of their amount and certificates for the balance. The number of bonds surrendered amounted to about thirty millions of dollars, for which new bonds to the amount of twenty millions were issued. A contract was thus executed

between the State and the holders of the new coupons which the State could not afterwards impair. As this court, with only one dissenting member, said in *Hartman* v. *Greenhow* with respect to this contract: "She thus bound herself not only to pay the bonds when they became due, but to receive the interest coupons from the bearer at and after their maturity, to their full amount, for any taxes or dues by him to the State. This receivability of the coupons for such taxes and dues was written on their face, and accompanied them into whatever hands they passed. It constituted their chief value, and was the main consideration offered to the holders of the old bonds to surrender them and accept new bonds for two-thirds of their amount." 102 U. S. 672, 679.

The Supreme Court of Appeals of Virginia had previously spoken, with respect to this contract, with equal clearness. Notwithstanding the language of the act of March 30, 1871, declaring that the interest coupons of the new bonds shall be "receivable at and after maturity for all taxes, debts, dues, and demands due the State," and this is expressed upon their face, the legislature of Virginia, within less than a year afterwards, on March 7, 1872, passed an act declaring that it shall not be lawful for any officers charged with the collection of taxes or other demands of the State then due, or to become due, "to receive in payment thereof anything else than gold or silver coin, United States treasury notes, or notes of the national banks." As this act was in direct conflict with that of March 30, 1871, its validity was assailed, and came before the Court of Appeals, in *Antoni* v. *Wright*, at the November Term, 1872. 22 Gratt. (Va.) 833. In an opinion of great ability and learning, the character and effect of the Funding Act were elaborately considered; and it was held that its provisions constituted a contract founded upon valuable considerations and binding upon the State. By the decision of the State court in that case, and of this court in *Hartman* v. *Greenhow*, the receivability of the coupons for taxes and demands of the State was held to be an essential part of the contract on which the bonds were received, and to constitute the chief value of the coupon and the principal inducement offered for the surrender of the old bonds and the acceptance of two-thirds of their amount. When the legis-

lature subsequently attempted to annul this receivability, and required coin or currency to be received for taxes, the Court of Appeals held that such interference with the receivability of the coupons impaired the obligation of the contract and was void. When again the legislature attempted to impair that receivability, by requiring the tax on the bond to which it originally belonged to be first deducted from the amount of the coupon before it could be received for other taxes, this court held that the legislation impaired the obligation of the contract. But now, strange to say, a law is sustained, as not impairing the obligation of the contract, although it prohibits the receivability of the coupons for State taxes, dues, and demands, and requires the holder to pay them in coin, treasury notes, or bills of the national banks, and, in return, gives him the privilege only, upon surrendering it, to test its genuineness and its receivability for taxes by instituting a suit, in which a jury is to be summoned, and any decision obtained may be taken to the Circuit Court and to the Court of Appeals. If final judgment shall be obtained that the coupon is genuine and legally receivable for taxes, the court is required to certify it to the treasurer of the Commonwealth, who shall then receive the coupon for taxes, that is to say, long after they are paid, and refund its amount out of the first money in the treasury, in preference to other claims. If there be no money in the treasury not otherwise appropriated, he may have to wait an indefinite period until the treasury is replenished. Not only does this act entail prolonged delay and expense in every case, but, in a majority of cases, the expense would exceed the amount of the coupon. Where only a few hundred dollars in bonds are held, the amount of the coupons would not justify the expenditure. Coupons for small amounts are thus rendered practically of no value. Their receivability for taxes, dues, and demands of the State is effectually destroyed.

Under the act of Jan. 14, 1882, there is no equivalent given to the creditor for the receivability of the coupon for taxes. The right to enforce on demand payment of a particular claim essentially differs, both in availability and value, from a right to reduce the claim to judgment after protracted litigation, and particularly when, even after judgment, a further delay is

necessary to wait until there are funds in the treasury of the State to pay it.

It would excite surprise in any commercial community if a bank, whose bills purport on their face to be payable on demand, should declare that inasmuch as there were some forged notes upon it in circulation, therefore it would pay only such as the holder should judicially establish to be genuine. It has been decided that any unnecessary delay by a bank in examining its bills to determine their genuineness is equivalent to a refusal to redeem them. A bank resorting to such a flimsy pretext to evade payment would at once be pronounced insolvent, and be put into the hands of a receiver.

No weight is to be given to the recitals in the preamble of the act of Jan. 14, 1882, as to outstanding forged bonds and coupons. In the first place, the State, by reciting that various frauds have been committed with respect to some of her securities, cannot legislate to impair the obligation of her contracts. In the second place, we are justified in considering that these recitals are without foundation in fact. According to the established doctrine of this country, the most which can be attributed to a recital of facts in the preamble of an act is, that it was represented to the legislature that they existed. It is not the province of the legislature to find facts which shall affect the rights of others; that is the province of the judiciary. Says Cooley: "A recital of facts in the preamble of a statute may, perhaps, be evidence when it relates to matters of a public nature, as that riots or disorders exist in a certain part of the country; but when the facts concern the rights of individuals, the legislature cannot adjudicate upon them." Constitutional Limitations, 96.

Says the Court of Appeals of Kentucky: "The legislature, in all its inquiring forms, by committees, makes no issue, and in their discretion may or may not coerce the attendance of witnesses, or the production of records, and are frequently not bound by those rules of evidence applicable to an issue properly formed, the trial of which is an exercise of judicial power. Once adopt the principle that such facts are conclusive, or even *prima facie* evidence against private rights, and many individual controversies may be prejudged, and drawn from the

functions of the judiciary into the vortex of legislative usurpation. The appropriate functions of the legislature are to make laws to operate on future incidents, and not the decision of or forestalling rights accrued or vested under previous laws." *Elmendorff* v. *Carmichael*, 3 Litt. 473, 480. In the case from which this citation is made two acts were under consideration; the recital in the preamble of one was that a certain person was a naturalized citizen; the recital in the preamble of the other was of a letter of attorney and a conveyance by a third party; and the court said: "Such a preamble is evidence that the facts were so represented to the legislature, and not that they are really true." Although the language cited was used with reference to the preamble of a private statute, Sedgwick, in his Treatise on the Interpretation and Construction of Statutory and Constitutional Law, after quoting it, says: "This reasoning applies with as much force to public as to private statutes; and the Supreme Court of New York has well said that the legislature has no jurisdiction to determine facts touching the rights of individuals."

The weight usually accorded to a recital of matters of fact in the preamble of an act, that the facts were so represented to the legislature, cannot be allowed here; for the journals of the legislature of Virginia show that it had information when the act was passed, that the very opposite of the recitals was true, — that there were no forged or counterfeit bonds or coupons in existence, as therein stated. The journals may be referred to in order to show what was brought to the attention of the legislature, and those journals show that in 1880 the House of Delegates of Virginia appointed a committee to examine the office of the second auditor, who is the custodian of all papers relating to the debt of the State, to ascertain whether there were any forged or counterfeit bonds or coupons among them; and the committee reported that they were unable to find a single forged or counterfeit bond or coupon; and of the millions of dollars in coupons which had been paid into the treasury since 1871 all were accounted for, except coupons to the amount of $28,197. As it was the duty of the officer on receiving the coupons to cancel them, it must be presumed that these were properly cancelled by him at the time.

Again, in answer to a resolution of the House of Delegates, dated Jan. 9, 1882, the second auditor reported that no counterfeit or forged obligations, bonds, coupons, or certificates of the State had in any way come to his knowledge. And in answer to a resolution of the Senate of the 16th of January, 1882, the same auditor replied that he had no knowledge of any spurious or forged bonds or coupons issued or purporting to be issued under the Funding Act of March 30, 1871; and in an examination had into the matter, a clerk in the second auditor's office testified that he was familiar with the coupons issued under the act of March 30, 1871, and had handled about seven millions of them, and had never seen or heard of a counterfeit coupon. Another witness connected with the treasurer's office stated that he was familiar with the conduct and management of both the second auditor's office and of the treasurer's office, and that he had never heard of a duplicate or forged coupon.

In the third place, assuming that the $28,197 in coupons which could not be found in the auditor's office or accounted for had not been cancelled, but had been mislaid, lost, or stolen, the holders of other coupons ought not to be deprived of their use because the officers of the auditor's department had been neglectful of their duties. Assuming, also, against the fact, that there were forged and spurious coupons of the State, their existence did not warrant a rejection of such as are genuine. Although no officer questions their genuineness when tendered, the holder of them must make up an issue with the State to try the fact before a jury. The act was evidently designed to accomplish much more than the protection of the holders of genuine coupons. As justly said by one of the judges of the Court of Appeals: "Whilst its professed object in its title is to prevent frauds upon the Commonwealth and the holders of its securities, it greatly depreciates the value of those securities, and thereby impairs the obligation of contracts, under the vain pretext that it is necessary to protect the Commonwealth against frauds. It not only destroys or renders almost valueless the coupon, but also the coupon bonds, amounting to millions of dollars, issued by the State by authority of the act of March 30, 1871, and whose value depends upon the prompt payment of interest, of which assurance was given by the State to the

holders of those bonds by the stipulation in the contract that the coupons at and after maturity should be receivable for all taxes, debts, &c., due the State. This statute prohibits revenue officers to receive any coupons, though unquestionably genuine, when tendered for and in discharge of taxes, &c., due the State, and requires the bearer of the coupon so tendered to pay his taxes in coin or other currency, which I think is plainly a repudiation or annulment of the State's contract."

The clause of the Constitution which declares that no State shall pass any law impairing the obligation of contracts prohibits legislation thus affecting contracts between the State and individuals equally as it does contracts between individuals. Indeed, the greater number of cases in which the protection of the constitutional provision has been invoked against subsequent legislative impairment of contracts has been of those in which the State was one of the contracting parties. Where a State enters the markets of the world and becomes a borrower, she lays aside her sovereignty and takes upon herself the position of an ordinary civil corporation, or of an individual, and is bound accordingly. *Davis* v. *Gray*, 16 Wall. 203; *Murray* v. *Charleston*, 96 U. S. 432; *Hall* v. *Wisconsin*, 103 id. 5.

What, then, was the obligation of the contract entered into between Virginia and her creditors under the Funding Act of 1871, so far as the interest coupons are concerned? The contract is that she will pay the amount of the coupon, and that it shall, at and after maturity, be receivable for taxes, dues, and demands of the State. And by its receivability is meant that it is to be taken by officers whom the State may authorize to receive money for its dues whenever tendered for them. By the obligation of a contract is meant the means which the law affords for its execution, the means by which it could, at the time it was made, be enforced. As said by the court in *McCracken* v. *Hayward*, "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts and form a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other." 2 How. 608, 612.

To the same purport and still more emphatic is the language

of the court in *Walker* v. *Whitehead*, 16 Wall. 314, 317: "The laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it. This embraces alike those which affect its validity, construction, discharge, and enforcement. Nothing is more material to the obligation of a contract, than the means of its enforcement. The ideas of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the Constitution against impairment."

In other words, to quote the language of Professor Pomeroy in his work on Constitutional Law, "A party may demand that substantially the same remedial right appropriate to his contract when it was entered into shall be accorded to him when it is broken." "Under our system of jurisprudence," says the same writer, "two forms of remedial right may result to the injured party upon the breach of a contract; the one form applying to a small number only of agreements, the other being appropriate to all. The first is the right to have done exactly what the defaulting party promised to do, — the remedial right to a specific performance. The other is compensatory, or the right to be paid such an amount of pecuniary damages as shall be a compensation for the injury caused by the failure of the defaulting party to do exactly what he promised to do. Both of these species of remedial rights must be pursued by the aid of the courts. In both the existence of the contract and of the breach must be established. These facts having been sufficiently ascertained, a decree or judicial order must be rendered, in the first case, that the defaulting party do exactly what he undertook to do, and in the second case, that the defaulting party pay the sum of money fixed as a compensation for his delict." Sects. 611, 612.

The receivability of the coupon, under the Funding Act of 1871, for taxes, dues, and demands, gave to it, as already said, its principal value. At that time there was provided in the system of procedure of the State a remedy for the specific execution of the contract, by which this receivability could be enforced. The legislation of Jan. 14 and April 7, 1882, deprives the holder of the coupon of this remedy, and in lieu of it gives him the barren privilege, after paying the taxes, of suing

in a local court to test before a jury the genuineness of the coupon and its legal receivability for them; and in case he establishes these facts, of having a judgment to that effect certified to the treasurer of the Commonwealth, and the amount paid refunded out of money in the treasury, if there be any. To recover this judgment he must pay the costs of the proceeding, including the fees of witnesses and jurors, and of the clerk, sheriff, and other officers of the court. This is a most palpable and flagrant impairment of the obligation of the contract. No legislation more destructive of all value to the contract is conceivable, unless it should absolutely and in terms repudiate the coupon as a contract at all. It is practical repudiation.

In *Bronson* v. *Kinzie* this court, speaking by Chief Justice Taney, said: "It is difficult, perhaps, to draw a line that would be applicable in all cases between legitimate alterations of the remedy and provisions which, in the form of remedy, impair the right. But it is manifest that the obligation of a contract, and the rights of a party under it, may in effect be destroyed by denying a remedy altogether, or may be seriously impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing. And no one, we presume, would say that there is any substantial difference between a retrospective law, declaring a particular contract or class of contracts to be abrogated and void, and one which took away all remedy to enforce them, or incumbered it with conditions that rendered it useless or impracticable to pursue it." 1 How. 311, 317.

In *Planters' Bank* v. *Sharp* this court said: "One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not, by the Constitution, to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force." 6 id. 301, 327.

In *Murray* v. *Charleston* the court cited with approval the language of a previous decision to the effect that a law which alters the terms of a contract by imposing new conditions, or dispensing with those expressed, impairs its obligation; and added, speaking by Mr. Justice Strong, who recently occupied a seat on this bench, that "it is one of the highest duties of

this court to take care the prohibition [against the impairment of contracts] shall neither be evaded nor frittered away. Complete effect must be given to it in all its spirit." 96 U. S. 432, 448.

In *Edwards* v. *Kearzey* this court said, speaking by Mr. Justice Swayne, so lately one of our number: "The remedy subsisting in a State when and where a contract is made and is to be performed is a part of its obligation, and any subsequent law of the State which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is therefore void." 96 U. S. 595, 607. Mr. Justice Clifford, also lately sitting with us, in a concurring opinion in the same case, said: "When an appropriate remedy exists for the enforcement of the contract at the time it was made, the State legislature cannot deprive the party of such a remedy, nor can the legislature append to the right such restrictions or conditions as to render its exercise ineffectual or unavailing." Id. 608.

And only two terms ago, in *Louisiana* v. *New Orleans*, this court said, without a dissenting voice, that "the obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced, by which the parties can be obliged to perform it. Whatever legislation lessens the efficacy of these means impairs the obligation. If it tend to postpone or retard the enforcement of the contract, the obligation of the latter is to that extent weakened." 102 id. 203, 206.

How can it be maintained, in the face of these decisions, that the legislation of Jan. 14 and April 7, 1882, does not impair the obligation of the contract under the Funding Act? It annuls the present receivability of the coupon; it substitutes for the specific execution of the contract a protracted litigation; and when the genuineness of the coupon and its legal receivability for taxes are judicially established, its payment is made dependent upon the existence of money in the treasury of the State. If the language of the act, declaring that, when the genuineness of the coupon and its receivability for taxes are established, the taxes paid by its holder shall be refunded out of the first money in the treasury in preference to other claims, be deemed a sufficient appropriation to authorize the treasurer

to pay out the money, contrary to what has just been decided with respect to language much more expressive in the legislation of Louisiana, of what avail can it be to the owner of the coupon if the treasurer refuse to refund the amount? There is no mode, according to the opinion of the majority, of coercing his action. No *mandamus* can issue, for that remedy and all compulsory process have been abolished.

Besides all this, as the coupons are mostly for small amounts, the costs of the suits to test their genuineness and receivability for taxes would be more than their value. Practically, the law destroys the coupons, and it was evidently intended to have that effect.

There is nothing at all similar to this, as seems to be intimated by the opinion of the majority, in the revenue system of the United States which forbids judicial proceedings to restrain the collection of a tax for its alleged invalidity, and only authorizes suit to recover back the money if paid under protest. Here the validity of the tax of Virginia is not assailed. The only question is, shall the officer of the State be required to receive in payment of the tax what she by her contract declared he should receive.

Tennessee v. *Sneed*, 96 U. S. 69, is cited as giving support to the decision in this case. I do not think that it gives it any support whatever. It does not sustain the doctrine that a State may abolish the right of *mandamus* to which a creditor at the time of the contract was entitled, as a mode of specifically enforcing it. The facts of the case are these: In 1838 the legislature of Tennessee passed a law, with respect to the bills and notes of the Bank of Tennessee, declaring that "the bills and notes of the said corporation, originally made payable, or which shall have become payable on demand in gold or silver coin, shall be receivable at the treasury, and by all tax-collectors and other public officers, in all payments for taxes or other moneys due the State."

The Supreme Court of the State decided that a proceeding by *mandamus* against an officer of the State to enforce the receipt of these bills for taxes was virtually a suit against the State, and could not be maintained prior to 1855, when an act was passed allowing suits to be brought against the State under

the same rules and regulations that govern actions between private parties. In 1865 this act was repealed. The creditor, when the contract was made, acquired, therefore, no right to the writ of *mandamus*, for it was not then an existing remedy; and so Mr. Justice Hunt, in delivering the opinion of the court, said: "The question discussed by Mr. Justice Swayne in *Walker* v. *Whitehead*, 16 Wall. 314, of the preservation of the laws in existence at the time of the making of the contract, is not before us. The claim is of a subsequent injury to the contract." And the court, after referring to the numerous cases of a change of remedies, says: "The rule seems to be that in modes of proceeding and of forms to enforce the contract, the legislature has the control, and may enlarge, limit, or alter them, provided that it does not deny a remedy, or so embarrass it with restrictions and conditions as seriously to impair the value of the right."

Here the original remedy possessed by the coupon-holder is abolished, and that which is given as a substitute is so embarrassed with conditions as to destroy the value of the contract.

In *Louisiana* v. *Pilsbury*, which was before us at the last term, the legislature of that State had passed a law prohibiting its courts from issuing a *mandamus* to compel the levy of a tax for the payment of bonds other than those issued under what was known as the premium-bond plan, thus cutting off the means of enforcing certain bonds held by the relator; and this court unanimously held that "the inhibition upon the courts of the State to issue a *mandamus* for the levy of a tax for the payment of interest or principal of any bonds except those issued under the premium-bond plan was a clear impairment of the means for the enforcement of the contract with the holders of the consolidated bonds. When the contract was made, the writ was the usual and the only effective means to compel the city authorities to do their duty in the premises, in case of their failure to provide in other ways the required funds. There was no other complete and adequate remedy. The only ground on which a change of remedy existing when a contract was made is permissible without impairment of the contract is, that a new and adequate and efficacious remedy be substituted for that which is superseded." 105 U. S. 278, 301.

That there is any adequate and efficacious remedy substituted for the one in existence when the Funding Act was adopted, cannot, it seems to me, be seriously affirmed. The remedy originally existing was effective. No officer could refuse to receive the coupon without subjecting himself to personal liability. After a tender no valid sale could be made for the taxes. And the creditor could invoke the compulsory process of the courts to secure a specific performance. Now all is changed. A law which practically destroys the value of the coupon is sustained. The officer is not bound to receive it, in the sense that he cannot be compelled to take it. He can enforce the payment of taxes in money; he can sell property, if necessary, to collect them; he can wholly ignore the coupon, unless the holder should foolishly consent to incur double the amount in costs to establish by a jury trial its genuineness and legal receivability for taxes.

I find myself bewildered by the opinion of the majority of the court. I confess that I cannot comprehend it, so foreign does it appear to be from what I have heretofore supposed to be established and settled law. And I fear that it will be appealed to as an excuse, if not justification, for legislation amounting practically to the repudiation of the obligations of States, and of their subordinate municipalities, — their cities and counties. It will only be necessary to insert in their statutes a false recital of the existence of forged and spurious bonds and coupons, —as a plausible pretext for such legislation, — and their schemes of plunder will be accomplished. No greater calamity could, in my judgment, befall the country than the general adoption of the doctrine that it is not a constitutional impairment of the obligation of contracts, to embarrass their enforcement with onerous and destructive conditions, and thus to evade the performance of them.

I am of opinion that the judgment of the Court of Appeals of Virginia should be reversed, and the cause remanded with instructions to award the *mandamus* prayed.

MR. JUSTICE HARLAN. I understand my brethren of the majority, in the opinion read by the Chief Justice, to declare:

That the bonds and coupons issued by Virginia, under the

Funding Act of March 30, 1871, constitute contracts within the meaning of that clause of the Federal Constitution which forbids a State from passing any law impairing the obligation of contracts;

That the holder of a coupon, so issued, against whom State taxes are assessed, is entitled under his contract to have it applied in payment of them, when it is offered for that purpose;

That the act of Jan. 14, 1882, in so far as it prevents the tax-collector from receiving it, when so offered, for any purposes except that of identification and verification, is in conflict with the Federal Constitution, and, therefore, void;

That, as a general rule, the laws applicable to the case, in force at the time and place of making a contract, including those which affect its validity, construction, discharge, and *enforcement*, enter into and form a part of the contract itself; and that while the State may alter or change existing remedies, it may not make such alterations and changes in the forms of action or the modes of proceeding as will impair substantial rights, or leave the party without an adequate and efficacious remedy for their enforcement;

I understand them, also, to reaffirm *Bronson* v. *Kinzie*, 1 How. 311, where, among other things, this court, speaking by Chief Justice Taney, said: "It is difficult, perhaps, to draw a line that would be applicable in all cases between legitimate alterations of the remedy, and provisions which, in the form of remedy, impair the right. But it is manifest that the obligation of the contract, and the rights of a party under it, may, in effect, be destroyed by denying a remedy altogether; or may be seriously impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing. And no one, we presume, would say that there is any substantial difference between a retrospective law declaring a particular contract or class of contracts to be abrogated and void, and one which took away all remedy to enforce them, or incumbered it with conditions that rendered it useless or impracticable to pursue it." p. 317.

I do not understand the court to throw any doubt upon, or in any degree to qualify the decision in, *State of New Jer-*

sey v. *Wilson*, 7 Cranch, 164, 166, where it is declared that the contract clause of the Constitution "extends to contracts to which a State is a party, as well as to contracts between individuals;" or in *Providence Bank* v. *Billings*, 4 Pet. 514, 560, where this court, speaking by Chief Justice Marshall, said that it had "been settled that a contract entered into between a State and an individual is as fully protected by the tenth section of the first article of the Constitution, as a contract between two individuals;" or in *Green* v. *Biddle*, 8 Wheat. 1, 84, where it was said, through Mr. Justice Washington, "that the Constitution of the United States embraces all contracts, executed or executory, whether between individuals, or between a State and individuals; and that a State has no more power to impair an obligation into which she herself has entered than she can the contracts of individuals;" or in *Woodruff* v. *Trapnall*, 10 How. 190, 207, where, speaking by Mr. Justice McLean, the court declared that "a State can no more impair, by legislation, the obligation of its own contracts, than it can impair the obligation of the contracts of individuals;" or in *Wolff* v. *New Orleans*, 103 U. S. 358, 367, where, speaking by Mr. Justice Field, this court unanimously held "that the prohibition of the Constitution against the passage of laws impairing the obligation of contracts applies to the contracts of States, and to those of its agents under its authority, as well as to contracts between individuals."

These propositions meet my hearty approval, as well because they rest upon a sound interpretation of the Constitution, as because they have been long established by the decisions of this court. But the difficulty I have is to reconcile the judgment in this case with these admitted propositions, and, therefore, I am, with my brother Field, constrained to dissent from so much of the opinion as maintains that the remedy provided by the act of Jan. 14, 1882, is adequate and efficacious for the protection and enforcement of the rights of the holders of the bonds and coupons, and substantially equivalent to that given when they were issued. On the contrary, the act, especially as subsequently modified, is, I take leave to say, a palpable and flagrant impairment of the obligation of the contract of Virginia, and, consequently, is unconstitutional and void. If it be

upheld in its application to the bonds and coupons issued under the Funding Act, it is difficult to perceive that the contract clause of the Constitution is of the slightest practical value for the preservation of the rights of parties dealing with a State. Indeed, the act, in its necessary operation, as directly and effectually impairs the commercial value of the bonds and the tax-paying power of the coupons thereunto annexed, as would a statute which in terms repudiated them, and forbade the receipt of the coupons, under any circumstances, for taxes or demands due to the Commonwealth.

What were the rights of the bondholder under the funding act, and other laws of Virginia in force when it was passed? This inquiry is fundamental, since those rights are entitled to judicial protection, either by the remedies existing when they accrued, or by such, if any, subsequently given, as may be adequate and efficacious to that end. Under the contract, Antoni was entitled, as all agree, to have his coupon received, when offered, in payment of his taxes. If, when so offered, it was refused, those laws provided him with the remedy of a *mandamus* from the Supreme Court of Appeals to compel the collector to accept it and cancel the taxes. This is conceded by my brethren of the majority, and no one claims that there was then any other remedy for the direct enforcement of the contract. And that remedy, it cannot be denied, was of value, since the taxes, until paid, constituted an incumbrance upon the taxpayer's property which he could not prudently overlook, and which he was entitled to have removed. It should be observed, in this connection, that section 2 of article 4 of the Constitution of Virginia, adopted in 1870, gave in express terms original jurisdiction to that court in cases of *mandamus*. Such were his contract rights under the act of 1871, and such was the remedy then given for their enforcement.

I proceed to inquire whether those rights have been impaired by the act of Jan. 14, 1882. The first section declares that the officer to whom coupons, issued under the act of 1871, are tendered in payment of taxes, debts, or demands due the State, "shall receive the same for the purpose of identification and verification." The second section provides that he shall, at the same time, require the taxpayer to pay his taxes

in coin, legal-tender notes, or national-bank bills, and, upon such payment, give him a receipt for the same; and, in case of a refusal so to pay, the officer is directed to collect the taxes as all other delinquent taxes are collected, that is, by levy and distraint.

It may be observed here that when the taxpayer elects to stand upon the terms of his contract, and refuses to pay his taxes in coin, legal-tender notes, or bank-bills, the act, curiously enough, does not direct the officer to return the coupons so tendered, but requires him to deliver them to the judge of the county court of the county or the hustings court of the city in which such taxes, debts, or demands are payable. Thereupon the taxpayer is "at liberty to file his petition in said county court against the Commonwealth," and have a jury impanelled to try whether the coupons are "genuine, legal coupons, which are legally receivable for taxes, debts, and demands," with right of appeal by either party to the Circuit Court and the Court of Appeals. "If it be finally decided in favor of the petitioner that the coupons tendered by him are genuine, legal coupons, which are legally receivable for taxes, and so forth, then the judgment of the court shall be certified to the treasurer, who, upon the receipt thereof, shall receive said coupons for taxes, and shall refund the money, before then paid for his taxes by the taxpayer, out of the first money in the treasury, in preference to all other claims."

The alteration made by the act of Jan. 14, 1882, of the remedy by *mandamus* is this: If a *mandamus* is applied for to any court of the Commonwealth, the collector shall make return "that he is ready to receive said coupons in payment of such taxes, debts, and demands as soon as they have been legally ascertained to be genuine, and the coupons which, by law, are actually receivable." Upon such return, the court shall require the taxpayer to pay his taxes to the proper officer, which being done, the taxpayer must file his coupons in court, which is directed to forward them to the county court of the county or the hustings court of the city where the taxes are payable, when an issue is framed, upon the trial of which the officer representing the State must require proof of the genuineness and legality of the coupons tendered. A

right of appeal is given to the Circuit Court and the Supreme Court of Appeals. If the petitioner finally succeeds, then the court is required to issue a *mandamus* for the receipt of the coupons for the taxes assessed. Thereupon the treasurer of the Commonwealth must refund to the taxpayer the amount theretofore paid by him out of any money in the treasury, in preference to all other claims. The Act of April 7, 1882, provides that no writ of *mandamus* shall issue from the Supreme Court of Appeals "in any case of the collection or attempt to collect revenue, or compel the collecting officers to receive anything in payment of taxes other than as provided in chap. 41, Acts of Assembly, approved January 26, 1882, or in any case arising out of the collection of revenue in which the applicant for the writ of process has any other remedy adequate for the protection and enforcement of his individual right, claim, and demand, if just."

This court waives any determination of the question whether the act of April 7, 1882, repeals so much of that of Jan. 14, 1882, as relates to *mandamus*. But, referring to the remedy given by the first, second, and third sections of the latter act, it holds that there is no substantial difference between the remedy given by those sections and the remedy given by *mandamus* in the same act; further, — which is vital in this case, — that the obligation of the contract is not impaired by the changes made, by the act of Jan. 14, 1882, in the remedies for its enforcement, in case the collector refuses to accept in payment of taxes coupons, when offered for that purpose.

Here is the radical difference between the majority of my brethren and myself. To my mind, — I say it with all respect for them, — it is so entirely clear that the change in the remedies has impaired both the obligation and the value of the contract, that I almost despair of making it clearer by argument or illustration.

It is conceded that under the contract the taxpayer is entitled to have his coupon received for his taxes when tendered, while under the act of Jan. 14, 1882, the collector is forbidden to so receive it; and the taxpayer, in order to protect his property against levy or distraint, and relieve it from the incumbrance created by the assessment of taxes, must pay

them in money, and then, if he wishes to get it back, prove to the satisfaction of twelve jurymen the genuineness and legal receivability of his coupons.

Under the contract and the laws in force when it was made, the taxpayer is entitled, in the first instance, to enforce the receipt of his coupons for taxes by *mandamus*, the sole remedy then given to effect that result; while under the subsequent legislation he is denied the right to that writ until he first pays his taxes in money, and then proves to the satisfaction of twelve jurymen that they are genuine coupons, and legally receivable for taxes.

Under the contract and the laws in force when it was made, the collector was not bound to resist an application for a *mandamus*, and it is not to be presumed that he would do so unless he doubted the genuineness of the coupon tendered in payment of taxes. If, however, he did so, he became liable to pay costs when the taxpayer succeeded; while under the act of Jan. 14, 1882, all discretion is taken from the collector, and, without liability to pay costs in any contingency, he is required, although he may know the coupon to be genuine and legally receivable for taxes, to decline receiving it until the taxpayer, having first paid his taxes in money, shall, to the satisfaction of twelve jurymen, prove it to be genuine.

Let me further illustrate some of these propositions. Suppose the taxpayer holds a bond for $100 issued under the act of 1871. It has thirty-four years to run, and the interest, payable semi-annually for the whole period at the rate of six per cent per annum, is evidenced by sixty-eight coupons of three dollars each. Under the laws in force when the contract was made, — a *mandamus* to compel the receipt of the first coupon, having established its genuineness and its receivability for taxes, — the collector and the Commonwealth would be estopped from raising any such question as to the remaining coupons attached to the same bond. But under the act of Jan. 14, 1882, the collector is required, as to all coupons presented, although known to be genuine, to collect money for the taxes for which they are tendered; and that money is paid into the treasury of the Commonwealth, not to be returned unless the taxpayer, upon every presentation of coupons for taxes, goes through

the jury trial prescribed by that act, obtains a verdict establishing their genuineness and legal receivability for taxes, and, in the event of an appeal, secures an affirmance of the judgment in his favor. The verdict and judgment as to one coupon do not, under that act, establish the genuineness of other coupons of the same bond. Thus it is demonstrably clear that the taxpayer, before he can enforce the receipt of the entire sixty-eight coupons of one bond for $100, may be required to have at least as many jury trials, covering precisely the same issues, as there may be occasions to use coupons in payment of taxes. Certainly the taxpayer, if not an attorney, cannot safely go before the jury without an attorney to represent him. It is, therefore, almost absolutely certain that his attorney's fee and the costs for each jury trial will be several times greater than the amount of the coupons involved. The result, then, is that he will lose more by presenting his coupons in payment of his taxes than by making an absolute gift of them to the Commonwealth.

And the remedy thus given by the statutes, passed after the contract was made, for the enforcement of the taxpayer's admitted right to have his coupon received for taxes, when offered, is pronounced to be adequate and efficacious, and not an impairment of the substantial rights given by the contract. My brethren, — distinctly admitting that the legislation of 1882 is in hostility to the State's creditors, and has impaired the commercial value both of the bonds and their coupons, — in effect and by a refinement of reasoning which I am unable to comprehend, hold, that such legislation does not burden the proceedings for the enforcement of the contract with any new conditions or restrictions inconsistent with or impairing its obligation. I cannot assent to such conclusion, believing, as I do, not only that it is in direct conflict with every adjudged case cited, either by the court or by my brother Field, but that the new remedy is adequate and efficacious, not for the preservation and enforcement, but for the destruction, of the contract. The holders of the bonds and coupons are placed by the legislation of 1882 in a position where it is useless and impracticable to pursue the remedies thereby given. To my mind this is so perfectly apparent that I should have deemed it impossible that

any different view could be entertained. It should be remembered that the court places its decision upon the ground that the change in the remedy has not, in legal effect, impaired the obligation of the contract, and not upon the ground that this suit is, within the meaning of the Federal Constitution, a suit against the State. Nor could it be placed upon the latter ground without overturning the settled doctrines of this court. *Davis* v. *Gray*, 16 Wall. 203; *Osborn* v. *Bank of the United States*, 9 Wheat. 738; *Board of Liquidation* v. *McComb*, 92 U. S. 531. It is a case in which "a plain official duty, requiring no exercise of discretion, is to be performed," and where performance in the mode stipulated by the contract is refused. In such cases, any person who will sustain personal injury by such refusal may have a *mandamus* to compel its performance. *Board of Liquidation* v. *McComb*, *supra*. The acts of 1882, in their application to the bonds issued under that of 1871, are unconstitutional and void, because they impair the obligation of the contract between the parties. The way is, therefore, clear for the court to apply the remedy allowed by the statute when the contract was made. That remedy is, in law, unaffected by subsequent unconstitutional legislation. The defendant cannot plead such legislation as an excuse for the non-performance of a plain official duty, requiring no exercise of discretion, because, as held in *Board of Liquidation* v. *McComb*, *supra*, in accordance with settled principles, "an unconstitutional law will be treated by the courts as null and void;" and "if the officer plead the authority of an unconstitutional law for the non-performance or violation of his duty," that will not prevent a *mandamus* from being issued, or an injunction being granted when that is necessary to prevent threatened injury.

One word in this connection about *Tennessee* v. *Sneed*, 96 U. S. 69, to which the court refers as authority for the present decision. In the brief of the Attorney-General of Virginia the names of the justices who participated in that decision are given, and mine is placed among the number. This is an error into which counsel naturally fell by reason of the fact that there are cases in the same volume preceding *Tennessee* v. *Sneed*, and cases in the previous volume of our reports, in the decision of which I participated. In fact, however, that

case was determined, and the decision therein announced, before I became a member of this court.

Touching *Tennessee* v. *Sneed*, I may say that it does not militate against the views I have expressed. Upon the face of that decision it appears that this court, accepting as authority a decision of the Supreme Court of Tennessee, held that when the contract there in question was made, no remedy by *mandamus* was given against an officer of the State, charged with the collection of the revenue. And to show that the court did not have before it, and did not decide, any case of the impairment of the obligation of a contract through the withdrawal of existing remedies by subsequent legislation, I quote this language from the opinion of Mr. Justice Hunt, speaking for the court: "The question discussed by Mr. Justice Swayne, in *Walker* v. *Whitehead*, 16 Wall. 314, of the preservation of the laws in existence at the time of the making of the contract, is not before us. The claim is of a subsequent injury to the contract."

Without further elaboration, and referring to the authorities cited in the dissenting opinion of my brother Field, I content myself with saying that the principles of law applicable to the present cases are stated in *McCracken* v. *Hayward*, 2 How. 608, 612, 613, where this court, speaking by Mr. Justice Baldwin, said: "The obligation of a contract consists in its binding force on the party who makes it. This depends upon the laws in existence when it is made. These are necessarily referred to in all contracts, and form a part of them as the measure of the obligations to perform them by the one party, and the right acquired by the other. There can be no other standard by which to ascertain the extent of either than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract in favor of one party to the injury of the other; hence, any law which in its operation amounts to a denial or an obstruction of the rights accruing by a contract, though professing to act only on

the remedy, is directly obnoxious to the prohibition of the Constitution. . . . The obligation of the contract between the parties in this case was to perform the promises and undertakings contained therein; the right of the plaintiff was to damages for the breach thereof, to bring suit and obtain judgment, to take out and prosecute an execution against the defendant till the judgment was satisfied, pursuant to the existing laws of Illinois. These laws giving these rights were as perfectly binding on the defendant, and as much a part of the contract, as if they had been set forth in its stipulations in the very words of the law relating to judgments and executions."

Mr. Justice Story, in his Commentaries on the Constitution (vol. ii. p. 245), says that any deviation from the terms of a contract, by postponing or accelerating the performance it prescribes, or imposing conditions not expressed in the contract, or dispensing with the performance of those which are a part of the contract, impairs its obligation. And Judge Cooley, in his Treatise on Constitutional Limitations, summarizes, as I think correctly, the doctrines of numerous adjudged cases in this and other courts, when he says that "where a statute does not leave a party a substantial remedy, according to the course of justice as it existed at the time the contract was made, but shows upon its face an intention to clog, hamper, or embarrass the proceedings to enforce the remedy so as to destroy it entirely, and thus impair the contract, so far as it is in the power of the legislature to do it, such statute cannot be regarded as a mere regulation of the remedy, and is void" (p. 289), — language strikingly applicable to the legislation of Virginia.

By an act passed by the legislature of Virginia on the 7th of March, 1872, collectors of taxes were required to accept, in payment of taxes, nothing but gold and silver coin, United States treasury notes, and notes of national banks. But the Supreme Court of Appeals of that Commonwealth pronounced it to be unconstitutional as applied to the holders of bonds and coupons issued under the Funding Act of 1871. 22 Gratt. 933; 24 id. 169; 30 id. 137. Other statutes were subsequently passed plainly having for their object the destruction of the contracts made under and in pursuance of the Funding Act of 1871. The constitutional validity of that legislation was

involved in *Hartman* v. *Greenhow*, 102 U. S. 672. This court there, with only one dissenting voice, sustained the right of taxpayers, holding coupons issued under the act of 1871, to have them received in payment of taxes. Finally came the enactments of 1882, which have so changed the remedies existing when bonds were issued under the act of 1871 that taxpayers holding coupons of such bonds cannot use them in payment of taxes without expending more money to enforce a compliance with their contract than the coupons are worth.

I cannot agree that the courts of the Union are powerless against State legislation which is so manifestly designed to destroy contract rights protected by the Constitution of the United States.

Without stopping to speculate upon the disastrous consequences which would result both to the business interests and to the honor of the country if all the States should enact statutes similar to those passed by Virginia, I sum up what has been so imperfectly said by me: If, as is conceded, Antoni is entitled by the contract to have his coupon received in payment of taxes, when offered for that purpose, and if, as is also conceded in the opinion of the majority, he was entitled, by the laws in force when the contract was made, to the remedy of *mandamus* to compel the tax-collector to receive his coupons and discharge *pro tanto* his taxes, it is clear that the subsequent statute does impair the obligation of the contract, by imposing new and burdensome conditions, which not only prohibit the collector from receiving coupons in payment of taxes when offered, but require the taxpayer to pay his taxes in money, not to be returned to him unless, upon the occasion of each tender of coupons, he submits (without the possibility of recovering his costs of suit) to a jury trial, and proves to the satisfaction of twelve jurymen that the coupons tendered are genuine and legally receivable for taxes.

Upon the grounds stated I dissent from the judgment.